IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

**WP(C).No. 29262 of 2006(H)**
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PETITIONERS:
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1. E.S.VELAYUDHAN,
   EATTUNGAPPADY HOUSE, KALADY P.O.,
   ERNAKULAM-683 574.

2. P.K.JOSE,
   PONDEMPILLY HOUSE,
   KALADY PO., ERNAKULAM 683 574.

3. E.S.SURESH,
   EATTUNGAPPADY HOUSE, KALADY P.O.,
   ERNAKULAM 683 574.

4. E.S.SANTHOSH,
   EATTUNGAPADY HOUSE,
   KALADY P.O., ERNAKULAM 683 574.

5. N.N.SATHEESAN,
   NEDUMPLAVIL HOUSE, CHENGAL,
   KALADY P.O., ERNAKULAM 683 574.

   BY ADV. SRI.B. SURESH KUMAR

RESPONDENTS:
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1. THE STATE OF KERALA REPRESENTED BY ITS
   SECRETARY TO THE PUBLIC WORKS DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER,
   THE KERALA STATE TRANSPORT PROJECT,
   (PWD), MUTHOOT BUILDINGS, THAIKAD,
   THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER,
THE KERALA STATE TRANSPORT PROJECT DIVISION,
PWD REST HOUSE COMPOUND,
MUVATTUPUZHA 686 661.

4. THE SPECIAL TAHSILDAR,
NATIONAL HIGHWAY II,
ALUVA P.O.,ERNAKULAM.

5. THE DISTRICT COLLECTOR,
ERNAKULAM.

*6. RAVI,
K.R.DRUGS, PARAPPURATHU HOUSE,
KALADY P.O., ERNAKULAM 683 574.

*7. THANKACHAN,
V.K.D. VEGETABLE MERCHANT,
VAREKKULAM, KALADY P.O., ERNAKULAM 683 574.

*8. BHARATAN,
MUTHAPPANTHARA, KALADY P.O.,
ERNAKULAM 683 574.

***(*RESPONDENT NOS. 6 TO 8 ARE DELETED AS PER ORDER DATED 13.11.2006 IN I.A.NO. 15743 OF 2006.)***

R1 TO R5 BY SR. GOVERNMENT PLEADER SHRI BENNY VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, ALONG WITH WP(C)NO. 29400 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

***PETITIONERS' EXHIBITS:***

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|---|---|---|
| EXT.P1 | : | A TRUE COPY OF THE THIRD ISSUE PLAN PREPARED BY THE 4TH RESPONDENT. |
| EXT.P2 | : | A TRUE COPY OF THE AWARD NOTICE 7/2005 IN LAC. 794/2004 DATED NIL ISSUED TO THE 1ST PETITIONER BY THE 4TH RESPONDENT. |
| EXT.P3 | : | A TRUE COPY OF THE AWARD NOTICE 7/2005 IN LAC. 796/2004 DATED 19.03.2005 ISSUED TO THE 2ND PETITIONER BY THE 4TH RESPONDENT. |
| EXT.P4 | : | A TRUE COPY OF THE AWARD NOTICE 7/2005 IN LAC. 792/2004 DATED 30.07.2005 ISSUED TO THE 3RD PETITIONER BY THE 4TH RESPONDENT. |
| EXT.P5 | : | A TRUE COPY OF THE AWARD NOTICE 7/2005 IN LAC. 795/2004 DATED NIL ISSUED TO THE 4TH PETITIONER BY THE 4TH RESPONDENT. |
| EXT.P6 | : | A TRUE COPY OF THE AWARD NOTICE 7/2005 DATED 19.03.2005 ISSUED TO THE 5TH PETITIONER BY THE 4TH RESPONDENT. |
| EXT.P7 | : | A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 18.05.2005 FILED BY THE 3RD RESPONDENT IN W.P.(C) No. 11792/2005. |
| EXT.P8 | : | A TRUE COPY OF THE JUDGMENT DATED 22/07/2005 IN W.P.(C) 11792/2005 PASSED BY THIS HOB'BLE COURT. |
| EXT.P9 | : | A ROUGH SKETCH OF THE AREA. |
| EXT.P10 | : | A TRUE COPY OF THE NOTICE DATED 30.10.2006 SERVED ON 04.11.2006 ON THE 1ST PETITIONER. |
| EXT.P11 | : | A TRUE COPY OF THE NOTICE DATED 30.10.2006 SERVED ON THE 2ND PETITIONER. |
| EXT.P12 | : | A TRUE COPY OF THE PHOTOGRAPH OF THE CANAL WITH THE BEND IN FRONT OF THE SHOP ROOMS OF CHANDRA BOSE, SUKUMARAN AND HIS WIFE SULATHA. |
| EXT.P13 | : | A TRUE COPY OF THE ROUGH SKETCH OF THE KALADY JUNCTION. |
| EXT.P14 | : | A TRUE COPY OF THE SKETCH SHOWING THE CANAL IN FRONT OF THE PETITIONERS' BUILDING. |

/TRUE COPY/

**K. PADMANABHAN NAIR ,J.**

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**W.P.(C) Nos.29262 of 2006 H**
**&**
**29400 of 2006 Y**

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**Dated, this the 16th day of October, 2007**

**JUDGMENT**

The reliefs sought for in these two Writ Petitions are identical. Petitioners in both the Writ Petitions are owners of shop rooms situated on the side of the Muvattupuzha - Angamaly road, in Sy.Nos.399/91, 399/93 and 399/96 of Kalady Village. For the up-gradation work of the M.C.Road from Muvattupuzha - Angamaly the Kerala State Transport Project had initiated steps with the assistance of the World Bank. The properties of the petitioners were acquired. In the property acquired there is a three storied building. Shop rooms bearing door Nos.VII/831, VII/827B, VII/833, VII/831 and VII/832 were owned by the petitioners in the W.P.(C) No.29262/2006. The 1st petitioner in W.P.(C) No.29400/2006 was the owner of shop rooms bearing door Nos.VII/827, 828 and 827A at Kalady Junction and the 2nd petitioner was one of the owners of shop room bearing door No.VII/829 at Kalady Junction. On an earlier occasion all petitioners except petitioners 3 to 5 in W.P.(C) No.29262/2006 and the petitioners in W.P.(C) No.29400/2006 jointly filed W.P.(C) No.11792/2005 challenging the notification. The above Writ Petition was dismissed subject to a direction that at the time when petitioners 1 and 2 are attempted to be dispossessed of their acquired properties, the respondents concerned shall ensure that the dispossession

is only of the extents mentioned in the awards passed in favour of the petitioner. It was also directed that if it becomes necessary to demolish any portion of the buildings belonging to the petitioners, the respondents shall make use of concrete cutting machines at the expenses of the petitioners.

2. It is averred that on the western side of the road the buildings belonging to Ravi and Thankachan are situated. It is averred that a drain is being constructed leaving 1.10 metres on the western side of the drain and in front of the buildings belonging to Ravi and Thankachan and thereby a deviation is made. According to the petitioners on account of the deviation the three storied building belonging to the petitioners on the opposite side is to be demolished. It is also averred that if the building is demolished one Bharatan who is having property on the rear side of the property acquired will get access to the main road. It is also averred that the width of the road is not uniform and it varies from 13.9 metres to 16.5 metres at different spots. So they pray that Exts.P10 and P11 notices issued by the third respondent may be quashed.

3. The third respondent Executive Engineer has filed a counter affidavit contending that the work was undertaken after a detailed survey for correcting the geometrics of existing roads, etc. It was contended that Louis Berger International was appointed as the expert who conducted the road survey and submitted a project report and based on that report the alignment was finalised. It was also contended that earlier Writ Petition filed by some of the petitioners was

dismissed. The respondents are ready and willing to obey the directions issued by this Court but the petitioners are not co-operating with the respondents for complying with the judgment. The allegation that the respondents have made changes in the original alignment was denied. It was further contended that construction of drain is part and parcel of road construction. It was also contended that footpath is provided on either side of the road for a width of 1.5 metre to 2 metres and normally the footpath is constructed on either side of the road so the spaces earmarked for the footpath can be used as a drain also. It was contended that in some cases the excavation near the boundary may not be practically possible as the foundation of nearby buildings and under ground utility cables or water lines are affected. It is admitted that the petitioners' building will be partly affected and that portion has to be inevitably demolished. It is also admitted that in view of the available puramboke land in certain areas the width of the road may also vary. It is contended that this project has not favoured any town or its inhabitants and thereby reduced the width of the road. So he prays for dismissal of the Writ Petitions.

4. The fourth respondent Land Acquisition Officer has also filed a counter affidavit contending that approximately 0.4110 hectares of land in Kalady Village comprised in various re-survey numbers was acquired. Section 4(1) notification was published on 25.1.2003 and Section 6(1) declaration was also published. Subsequently an award was also passed and since the amounts were not

received by the petitioners the same was deposited before the Subordinate Judge having jurisdiction under Section 31(2) of the Land Acquisition Act. Filing of W.P.(C) No.11792/2005 was admitted. It was averred that in respect P.J.Mathew and P.V.Reghu fresh awards were passed as directed by this Court. The averment that there is change in the alignment was denied. It was averred that awards were passed long back and those processes have become final and conclusive and as such no relief can be granted to the petitioners in the Writ Petitions. It was averred that when the alignments were fixed survey stones were fixed but while actually executing the work some of the survey stones are to be removed. It was specifically averred that the land and building of the land owners opposite to the petitioners has already been acquired and building was demolished. Hence he also prays for dismissal of both the Writ Petitions.

5. An Advocate Commissioner was deputed who filed a report. Third respondent has filed a detailed objection to the report contending that the findings of the Commissioner are not true. It was contended that the finding of the Commissioner that the building of the petitioners will have to be demolished is not true and he had prepared a report only to help the petitioners.

6. The main contention of the petitioners is that in order to help the owners of the buildings situated just opposite to the property of the petitioners a drain was constructed leaving a space of 1.1 metre in between the building and drain. The Land Acquisition Officer in his counter affidavit very specifically

averred that the property belonging to the persons just opposite to the petitioners' property were also acquired and part of the buildings were demolished. In paragraph 14 of the Commissioner's report the Commissioner had reported that with regard to the alignment of the building on the western side he could only say that it is not uniform and subject to variations and found partly demolished, but in each and every shop rooms the owners are running business. The specific contention raised by the respondents is that they have not made any change from the original alignment. There is absolutely nothing in the report of the Commissioner to show that any property on the western side of the road had been omitted and alignment has been shifted to eastwards with an idea to save the building owners on the western side. As already stated their land and buildings were already acquired and the buildings were partly demolished. Merely because some space is left between the drain and the eastern boundary of the acquired portion, it is not possible to hold that there is any change in the alignment. The property of the petitioners was already acquired and awards were passed. On an earlier occasion some of the petitioners made an attempt to quash the notification. This Court dismissed that Writ Petition. I am of the view that the petitioners are not entitled to get any relief but I reiterate the direction issued by this Court in W.P.(C) No.11792/2005 that when petitioners are attempted to be dispossessed of their acquired properties, the respondents concerned shall ensure that the dispossession is only of the extents mentioned in the awards passed in the

petitioners' favour and if it becomes necessary to demolish any portion of the buildings belonging to the petitioners the respondents shall make use of concrete cutting machines at the expenses of petitioners for that regard. I do not find any reason to interfere with the acquisition of the properties especially in view of the fact that there is absolutely nothing on record to show that any change was made by the respondents from the original alignment and from the properties already acquired. So the Writ Petitions are without any merit and liable to be dismissed.

In the result, both the Writ Petitions are dismissed.

**K. PADMANABHAN NAIR,**
**JUDGE.**

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